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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE
STATE OF CALIFORNIA

In the Matter of the Application of Pacific Gas and Electric Company for (1) Administration of Stress Test Methodology Developed Pursuant to Public Utilities Code Section 451.2(b) and (2) Determination That \$7.5 Billion of 2017 Catastrophic Wildfire Costs and Expenses Are Stress Test Costs That May Be Financed Through Issuance of Recovery Bonds Pursuant to Section 451.2(c) and Section 850 et seq.(U39E).

Application 20-04-023

(Filed April 30, 2020)

PROTEST OF THE CALIFORNIA LARGE ENERGY CONSUMERS ASSOCIATION
TO APPLICATION OF PACIFIC GAS & ELECTRIC COMPANY

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June 3, 2020

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This protest is filed pursuant to Rule 2.6 of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission) by the California Large Energy Consumers Association (CLECA).¹ This protest is timely, as the application was published on May 4, 2020.

I. PROTEST

A. Facts and Law Constituting Grounds for Protest

This Commission has already clearly and explicitly determined that a utility that has sought Chapter 11 protection in bankruptcy may not avail itself of the Stress Test and may not impose on ratepayers for recovery of unreasonable utility costs of the 2017 wildfires.² This lawful

¹ CLECA is an organization which has been an active participant in Commission regulatory proceedings since 1987, and all CLECA members engage in Demand Response (DR) programs to both promote grid reliability and help mitigate the impact of the high cost of electricity in California on the competitiveness of manufacturing. CLECA members have participated in the Base Interruptible Program (BIP) and its predecessor interruptible and non-firm programs since the early 1980s.

² See, generally, D. 19-06-027.

order is clear and unambiguous. PG&E voluntarily filed for Chapter 11 bankruptcy protection because of its 2017 and 2018 wildfire liabilities, and PG&E is in bankruptcy. These facts are incontrovertible. PG&E has sought rehearing of D. 19-06-027,³ yet the Commission's decision is unchanged and rightly, lawfully continues to prohibit PG&E, a utility in bankruptcy, from accessing the Stress Test. PG&E's application represents an impermissible collateral attack on D. 19-06-027. The application should be rejected.

B. Effect of Application on CLECA Members

CLECA is an organization of large, high load factor industrial customers located throughout California, including in PG&E's service territory. CLECA members are in the cement, steel, industrial gas, pipeline, beverage, cold storage, and mining industries, and share the fact that electricity costs comprise a significant portion of their costs of production. Some members are bundled customers, others are Direct Access (DA) customers, and some are served by Community Choice Aggregators (CCAs); a few members have onsite renewable generation. All CLECA members located in PG&E's service territory will be impacted by this application if it is approved, the costs of the contemplated bonds are secured by PG&E ratepayers' bills, and PG&E ratepayers are liable for that securitized debt.

C. Reasons the Application Is Not Justified

Federal bankruptcy law requires that, in order to emerge from bankruptcy, PG&E must confirm a Chapter 11 plan that satisfies prepetition claims, including the 2017 and 2018 wildfire

³ Pacific Gas and Electric Company's Application for Rehearing of D. 19-06-027, filed August 7, 2019 in R. 19-01-006 (arguing that D. 19-06-027 erred in law by ordering that a utility that has filed for Chapter 11 cannot avail itself of the Stress Test).

liabilities.⁴ PG&E's plan will use short-term utility debt to pay these wildfire liabilities, and PG&E witnesses swore under oath that PG&E would be able to refinance the short-term utility debt without the securitization transaction.⁵ PG&E witnesses also swore under oath that PG&E would be able to support the utility debt with cash flows from net operating losses.⁶ The application is not justified.

D. Proposed Category, Need for Hearing, Issues to be Considered, and Proposed Schedule

CLECA believes the application should be rejected outright; if it is not rejected, the categorization should be ratesetting, and hearings will likely be necessary. Further, PG&E should be required to serve updated testimony addressing all aspects of the Stress Test Methodology, including the determination of unreasonable 2017 wildfire costs⁷ and ratepayer protection measures. The schedule should be set for after September 30, 2020, and PG&E's full exit from bankruptcy, including not only confirmation of its plan of reorganization by the bankruptcy court, but also obtaining the financing for its plan of reorganization. Otherwise, the Commission will be deprived of current, detailed financial information required by the Stress Test Methodology.⁸

⁴ 11 U.S.C., § 1129 (identifying the requirements to confirm a Chapter 11 plan, including that the plan comply with the Bankruptcy Code and, in the event that an impaired class does not accept the plan, that the plan not discriminate unfairly, and is fair and equitable toward impaired classes).

⁵ I. 19-09-016 Vol. 4, Tr. 582 (PG&E/Wells) (Q "If the Commission were to deny PG&E's request to securitize the \$7 billion of debt post-bankruptcy, would PG&E be unable to refinance the \$6 billion in short-term debt currently targeted for repaying the wildfire victims?" A "We would be able to refinance.").

⁶ I. 19-09-016 Vol. 4, Tr. 582 (PG&E/Wells) (Q "Could PG&E use the cash flows from the net operating losses you reference in your testimony directly to support the 6 billion in utility debt, which is needed to pay the wildfire victims?" A "That is the intention, if unapproved.")

⁷ "[T]he amount of disallowed wildfire costs must be known in order to determine the Customer Harm Threshold." D. 19-06-027, Attachment A Stress Test Methodology, at 16.

⁸ It appears that the information provided in PG&E's application is already stale and out of date.

The Commission should not permit PG&E to force an expedited schedule here by filing an application for a financing order.⁹

II. CONCLUSION

CLECA appreciates the opportunity to submit this protest to PG&E's unlawful and unjustified application, and urges its expeditious rejection by the Commission.

Respectfully submitted,

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By:



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Consumers Association



June 3, 2020

⁹ Cal.Pub.Util.Code § 850.1(a)(1)(B) provides in part, "If the commission makes the determination specified in subparagraph (A), the commission shall establish, as part of the financing order, a procedure for the electrical corporation to submit applications from time to time to request the issuance of additional financing orders designating fixed recovery charges and any associated fixed recovery tax amounts as recoverable. The electrical corporation may submit an application with respect to recovery costs that an electrical corporation (i) has paid, (ii) has an existing legal obligation to pay, or (iii) would be obligated to pay pursuant to an executed settlement agreement. The commission shall, within 180 days of the filing of that application, issue a financing order, which may take the form of a resolution, if the commission determines that the amounts identified in the application are recovery costs."